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(File No: 28-104 JFS/CR)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STARR INDEMNITY & LIABILITY CO. a/s/o
AMERICAN EAGLE OUTFITTERS, INC.,

Plaintiff,

16 Civ. 00247

-against-

COMPLAINT

EXPEDITORS INTERNATIONAL OF
WASHINGTON, INC.,

Defendant.

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Plaintiff STARR INDEMNITY & LIABILITY CO. a/s/o AMERICAN EAGLE OUTFITTERS, INC. (“STARR”), by and through its attorneys, Nicoletti Hornig & Sweeney, as and for a Complaint against Defendant EXPEDITORS INTERNATIONAL OF WASHINGTON, INC. (“EXPEDITORS”) alleges upon information and belief as follows:

JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 (a) (1) inasmuch as the matter in controversy exceeds \$75,000.00 exclusive of interest and costs and is between citizens of different States.

VENUE

2. Venue is proper in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391 (b) in that defendant is subject to personal jurisdiction

within this Judicial District based on the forum selection clause of the Master Services Agreement between EXPEDITORS and AMERICAN EAGLE OUTFITTERS, INC. dated December 3, 2014.

PARTIES

3. At all times relevant, plaintiff STARR INDEMNITY AND LIABILITY CO. was and now is a corporation organized and existing under and by virtue of the laws of Texas, with an office and place of business at 399 Park Avenue, 24th Floor, New York, New York 10022.

4. At all times relevant, defendant EXPEDITORS was and now is a corporation organized and existing under and by virtue of the laws of Washington, with an office and place of business at 1015 Third Avenue, 12th Floor, Seattle, Washington 98104.

AS AND FOR A FIRST CAUSE OF ACTION

5. This action arises from the loss of a shipment of clothing items (the "Shipment") during the course of road transportation (truck No. 808EX4) in Mexico in June 2015.

6. Plaintiff STARR INDEMNITY AND LIABILITY CO. sues herein as subrogated insurer of the Shipment in suit owned by AMERICAN EAGLE OUTFITTERS, INC., having paid the \$689,806.98 insurance claim arising from the claimed cargo loss.

7. The Shipment moved under the Master Services Agreement between EXPEDITORS and AMERICAN EAGLE OUTFITTERS, INC. dated December 3, 2014. Pursuant to the Master Services Agreement, EXPEDITORS provides AMERICAN EAGLE OUTFITTERS, INC. global transportation, logistics and custom brokerage services.

8. EXPEDITORS, in consideration of certain agreed freight charges thereupon paid or agreed to be paid, agreed to transport and/or ship and/or store and/or warehouse and/or

arrange and provide for the transportation of the Shipment and to safeguard and/or deliver the Shipment in good order and condition.

9. When the Shipment was received into the custody of EXPEDITORS and/or its subcontractors, the Shipment was in good order and condition.

10. The Shipment was never delivered at its destination in Mexico.

11. Said loss of the Shipment was the result of EXPEDITORS's reckless failure to properly carry and care for the Shipment during inland transportation of the Shipment in Mexico and its fundamental breach of the Master Services Agreement and/or other transportation contracts applicable to this Shipment.

12. By reason of the premises, STARR has sustained damages, as nearly as the same can now be determined, no part of which has been paid although duly demanded, in the sum of USD \$689,806.98.

AS AND FOR A SECOND CAUSE OF ACTION

13. Plaintiff repeats and realleges the allegations set forth in paragraphs "1" through "12" hereof with the same force and effect as though the same were set forth herein in full and in length.

14. When the Shipment was received into the custody of EXPEDITORS and/or its subcontractors, the Shipment was in good order and condition.

15. The Shipment was never delivered at destination in Mexico.

16. As a result of the aforesaid, EXPEDITORS is liable to STARR as a common carrier, forwarder, warehouseman, and/or bailee for hire.

17. By reason of the premises, STARR has sustained damages, as nearly as the same can now be determined, no part of which has been paid although duly demanded, in the sum of USD \$689,806.98.

AS AND FOR A THIRD CAUSE OF ACTION

18. Plaintiff repeats and realleges the allegations set forth in paragraphs "1" through "17" hereof with the same force and effect as though the same were set forth herein in full and in length.

19. EXPEDITORS owed a duty to transport and/or ship and/or store and/or warehouse and/or arrange and provide for the transportation of the Shipment and to safeguard and/or deliver the Shipment in good order and condition.

20. Through EXPEDITORS' lack of due care and/or failure to safeguard the cargo and/or negligence and/or gross negligence and/or recklessness and/or other willful misconduct, the Shipment was damaged and EXPEDITORS has breached each of the aforesaid duties described herein.

21. By reason of the premises, STARR has sustained damages, as nearly as the same can now be determined, no part of which has been paid although duly demanded, in the sum of USD \$689,806.98.

AS AND FOR A FOURTH CAUSE OF ACTION

22. Plaintiff repeats and realleges the allegations set forth in paragraphs "1" through "21" hereof with the same force and effect as though the same were set forth herein in full and in length.

23. Pursuant to the Master Services Agreement, the prevailing party in litigation shall be entitled to recover all costs associated with the dispute, including reasonable attorneys' fees.

24. By reason of the premises, STARR is entitled to an award in this action of its reasonable attorneys' fees.

WHEREFORE, plaintiff STARR INDEMNITY AND LIABILITY CO. prays:

- (a) That process in due form of law may issue against EXPEDITORS citing it to appear and answer all and singular the matters aforesaid;
- (b) That judgment be entered in favor of STARR and against EXPEDITORS on the First Cause of Action in the sum of USD \$689,806.98, together with interest, costs and disbursements;
- (c) That judgment be entered in favor of STARR and against EXPEDITORS on the Second Cause of Action in the sum of USD \$689,806.98, together with interest, costs and disbursements;
- (d) That judgment be entered in favor of STARR and against EXPEDITORS on the Third Cause of Action in the sum of USD \$689,806.98, together with interest, costs and disbursements;
- (e) That judgment be entered in favor of STARR and against EXPEDITORS on the Fourth Cause of Action for its reasonable attorneys' fees, together with interest, costs and disbursements;
- (f) That this Court will grant to STARR such other, further and different relief as to this Court may seem just and proper.

Dated: New York, New York
January 13, 2016

NICOLETTI HORNIG & SWEENEY
Attorneys for Plaintiff

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